

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 24, 2009 at Knoxville

STATE OF TENNESSEE v. JUSTIN DEWAYNE PICKLE¹

Appeal from the Circuit Court for Bedford County
No. 16544 Lee Russell, Judge

No. M2009-00719-CCA-R3-CD - Filed December 21, 2009

The defendant, Justin Dewayne Pickle, appeals from the Bedford County Circuit Court's order revoking his probation and ordering service in confinement of his one-year, three-month sentence for a conviction of statutory rape. On appeal, he claims that the order of confinement was erroneous. Because the record supports the trial court's order, however, we affirm.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Donna Orr Hargrove, District Public Defender; and Michael J. Collins, Assistant Public Defender, for the appellant, Justin Dewayne Pickle.

Robert E. Cooper, Jr., Attorney General and Reporter; Matthew Bryant Haskell, Assistant Attorney General; Charles Frank Crawford, Jr., District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The defendant's conviction was entered via his guilty plea on or about July 3, 2008. The petitioner apparently was placed on probation after a Department of Correction determinate release on September 15, 2008. On December 11, 2009, the State issued a probation violation report based upon the petitioner's February 9, 2009 arrest for domestic assault.

In the revocation hearing, Donna Webb, the mother of the statutory rape victim, testified that, as a result of the offense, the victim bore a child. She testified that the defendant lived

¹ The record is unclear as to the spelling of the defendant's middle name. It is the policy of this court to use the spelling from the leading process, in this case the probation violation report. The record does not contain the charging instrument or the conviction judgment.

across the street from the house where she resided with the victim, the victim's sister, and the victim's child and that, on February 5, 2009, the defendant took the infant – his son and Ms. Webb's grandson – into his residence. When she went to retrieve the child, the defendant cursed her but relinquished the child to her. When the child's mother, the victim in the conviction offense, returned home from school on the school bus, she told Ms. Webb that she had to go to the defendant's house to get the child's things or else the defendant would throw them outside. Ms. Webb testified that when the victim returned to their home, she "had blood all over her face and was kind of like real spaced out." She testified that the victim was bleeding from her nose and seemed scared.

Within a few minutes, the defendant appeared at Ms. Webb's house "in tears begging [her] not to call the police" and stating that he did not hit the victim. Ms. Webb told him she would call the police unless the defendant did so. She testified that he called, and the police arrived within a short time. Ms. Webb testified that on the next day, she saw small bruises on the victim's back, arm, and leg and that the victim's back was sore. Ms. Webb admitted in her testimony that the victim was prone to spontaneous nosebleeds.

The victim testified that she was 17 years old and a high school junior. She testified that the defendant is the father of her six-month-old son. She testified that she had been having problems with the defendant prior to February 5, 2009. On that day, she received a text message from the defendant while she was at school. According to the victim, the message stated that Ms. Webb had retrieved the child "because of some drama that was going on" and that the victim "needed to come get [her] son's stuff out of his house." After returning home from school, the victim went to the defendant's house to pick up a diaper bag and its contents. She testified that when she entered the house, the defendant began "calling [her] all kinds of names and hit [her] in [her] arm." Then, as she was trying to leave the house, the defendant forcefully pushed her into the entertainment center, which impacted her lower back. She testified that, although the defendant did not strike her in the nose, her nose began bleeding as she ran outside.

The defendant testified that a charge of domestic assault was pending against him as a result of the February 5 incident. He claimed that the incident was prompted when the victim's sister photographed a truck belonging to another girl in the defendant's driveway and sent the picture to the victim at school. After the other girl left in her truck, Ms. Webb and another woman came to the defendant's house to get the child. They took the child and his things back to Ms. Webb's house. The defendant testified that when the victim arrived on the school bus, she went straight to his house and beat on, then kicked his door while screaming that he'd have "to choose, either that bitch or [her]." He testified that he did not answer because he knew "there was going to be some drama, there's always some drama. It's always about this other female."

The defendant testified that the victim did not enter his house that day but rather that, as he attempted to leave, she "smack[ed]" him. He testified that her nose started bleeding and that as he walked down the hill toward the street, the victim "dove off that [hill] and went to tackle [him]." Due to her light weight, he held her off. He testified that he took off his shirt and used it to help stem her nosebleed. He testified that she said that if she could not have him, no one could

and that she would put him “under the jail.” He stated that she left and that he then called 9-1-1. The defendant testified that he loved the victim and that he “shouldn’t have cheated on her, but that’s what this is all about.”

The defendant testified that, consistently with her prior conduct, the victim put the bruises on her own arm and suggested that her sister helped to create the bruises on her back. He claimed that “they’re all vindictive” and that Ms. Webb has “trained these girls to be – play the victim role so well.”

Following the hearing, the trial court entered an order finding the defendant in violation of his probation and ordering him to serve the balance of his sentence as previously imposed. The defendant filed a timely notice of appeal. On appeal, he claims that the court “improperly required the defendant to serve the balance of his sentence” and characterizes the confinement order as an abuse of discretion.

A trial court may revoke a sentence of probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his release. T.C.A. § 40-35-311(e) (2006); *Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). A revocation will be upheld absent a showing that the trial court abused its discretion. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). To establish that the trial court has abused its discretion, the defendant must show that there is no substantial evidence to support the determination that he violated his probation. *Id.* (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Relief will be granted only when “‘the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved.’” *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)). Upon finding a violation, the trial court may “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered.” T.C.A. § 40-35-311(e). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension.” *Id.* § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. See *State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

The defendant is aggrieved that the evidence against him was contrived and posits that inconsistencies in the testimony support this claim. He argues that the trial court abused its discretion in relying upon the testimony of the victim and Ms. Webb to incarcerate him for the balance of his sentence. His complaint, however, calls upon the appellate court to revisit the trial court’s determination of witness credibility and to make inferences from the testimony that the trial court rejected. Issues of the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and the appellate court may not encroach upon the trial court’s fact-finding power by re-weighing or re-evaluating the evidence. See, e.g., *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003). That said, we hold that the

record before us supports the trial court's decision to order the defendant to serve the sentence as originally imposed.

Accordingly, the order of the circuit court in this case is affirmed.

JAMES CURWOOD WITT, JR., JUDGE